

No. 12579

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United States  
Court of Appeals  
For the Ninth Circuit.

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UNITED STATES OF AMERICA,

Appellant.

vs.

FRANK X. GRUBL,

Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED  
AUG 19 1950

PAUL P. O'BRIEN,  
Clerk



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

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STEPHEN D. MONAHAN,  
ASHER SCHEIR,  
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EVELYN ST. JOHN,  
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1206 Santee St.,  
Los Angeles 15, Calif.

For Appellee:

ERNEST P. MORGAN,  
1164 Sunset Blvd.,  
Los Angeles 12, Calif. [1]

In the United States District Court, Southern  
District of California, Central Division

No. 10116-B

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

FRANK X. GRUBL, DOES I to X,  
Defendants.

COMPLAINT FOR TREBLE DAMAGES  
RESTITUTION AND INJUNCTION

I.

Plaintiff brings this action for restitution pursuant to Section 205(a) of the Emergency Price Control Act of 1942, as amended, and brings this action also for injunction, restitution and treble damages pursuant to Sections 205 and 206 of the Housing and Rent Act of 1947, as amended (Public Law 31, 81st Congress, 1st Session).

II.

Jurisdiction of this action is founded upon Section 205(c) of the Emergency Price Control Act of 1942, as amended, and Section 206 of said Housing and Rent Act of 1947, as amended.

III.

At all times mentioned herein prior to July 1, 1947, the housing accommodations located at 1130 Alpine Street, Los Angeles, California, (formerly 1125 Alpine Street, Los Angeles, California) have been subject to maximum rents authorized and



established pursuant to the Emergency Price Control Act of 1942, as amended. At all times mentioned herein on and after July 1, 1947, said housing accommodations have been subject to maximum rents authorized and in effect pursuant to said Housing and Rent Act of 1947, as amended. At all times mentioned in this complaint said premises have been within the Los Angeles Defense Rental Area.

#### IV.

That the Defendants Doe I to Doe X are the fictitious names of the defendants whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

#### V.

Defendant received from persons for the use and occupancy of said accommodations rents in excess of the maximum rents established pursuant to said Acts. A Schedule is attached hereto and by reference made a part hereof, as though fully set out herein. Said Schedule states the names of the persons using and occupying said accommodations, and the period of occupancy by such persons. Said Schedule states the rents charged to and received from said persons for such use and occu-

pancy during said period. Said Schedule states the applicable maximum rent. Said Schedule states the amount of the overcharges.

## VI.

In the judgment of the Housing Expediter the defendant has engaged and is about to engage in acts and practices which constitute and will constitute violations of provisions of said Acts and of regulations, orders [3\*] and requirements issued thereunder.

Wherefore, the plaintiff demands:

A. Judgment for the plaintiff to recover of the defendant treble the total amounts charged to persons, or demanded, accepted or received by the defendant from persons as rent for the use and occupancy of the housing accommodations described in this complaint, within one year prior to the filing of this complaint, which were in excess of the maximum rents established pursuant to said Housing and Rent Act of 1947, as amended, and further that:

B. The defendant be ordered and directed to pay to the Treasurer of the United States for and on behalf of all persons entitled thereto a refund of all amounts in excess of the maximum rents established pursuant to said Acts which were received by the defendant, his agents or employees since the date maximum rents were established for said housing accommodations pursuant to said Acts;

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\* Page numbering appearing at bottom of page of original certified Transcript of Record.

provided that refunds made by the defendant for and on behalf of such persons in compliance with the direction of the Court for rents received within one year prior to the bringing of this action, shall be deducted from the amount of the judgment prayed for in the preceding Paragraph "A"; or, in the alternative, that the defendant be ordered and directed to pay the amount of the overcharge referred to in this Paragraph "B" to the United States of America, and

C. A preliminary and final injunction enjoining the defendant, his agents, servants, employees, and all persons in active concert or participation with him, from:

1. Directly or indirectly charging, demanding, accepting or receiving amounts in excess of the maximum rent established pursuant to the afore-said Acts, and said Acts as hereafter amended or superseded and the regulations issued thereunder.

2. Directly or indirectly discontinuing, withholding, suspending or shutting off the supply of services, including utilities, heat, hot and cold [4] water, janitorial and maid service, furniture, furnishings, equipment, living space and all other services which the landlord is required to provide by said Acts and the regulations issued pursuant thereto, or threatening to do any of the foregoing with reference to the above-described housing accommodations or any other controlled housing ac-

commodations owned, managed or controlled by defendant.

3. Engaging in any action or cause of action the purpose of which is to evict illegally tenants from the above-described premises, or any other housing accommodations owned, controlled or managed by the defendant, and from evicting said tenants in any form or manner contrary to said Housing and Rent Act of 1947, as amended, and regulations issued pursuant thereto as heretofore or hereafter amended or superseded.

4. Violating said Housing and Rent Act of 1947, as amended, and any of the regulations issued pursuant thereto, as heretofore or hereafter amended or superseded.

D. Costs of the action incurred herein, and such other relief as the Court may deem just in the premises.

/s/ FAUSTA KUKURITIS,

Attorney,

Office of the Housing

Expediter. [5]

# SCHEDULE REFERRED TO IN PARAGRAPH V OF PLAINTIFF'S FIRST CAUSE OF ACTION

Housing Accommodations Located at 1130 Alpine Street, Los Angeles, California  
(Formerly 1125 Alpine Street, Los Angeles, California)

vs. Frank X. Grubl

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| Unit       | Name of Tenant      | Period of<br>Overcharges | Amount<br>Rent Paid | Maximum<br>Rent | Amount<br>of Over-<br>charges |
|------------|---------------------|--------------------------|---------------------|-----------------|-------------------------------|
| Rm. 11     | Nicolas Ramirez     | 6- 6-49 to 7- 6-49       | \$14.00 mo.         | \$ 2.25 wk.     | \$ 4.25                       |
| Rm. 13     | Anna Dyrsmid        | 7- 1-47 to 7-31-48       | 12.00 mo.           | 10.00 mo.       | 26.00                         |
| Rm. 13     | Anna Dyrsmid        | 8- 1-48 to 6-30-49       | 14.00 mo.           | 10.00 mo.       | 44.00                         |
| Rm. 17     | Francis O'Donnell   | 1- 1-48 to 7-31-48       | 13.00 mo.           | 10.00 mo.       | 21.00                         |
| Rm. 17     | Francis O'Donnell   | 8- 1-48 to 6-30-49       | 15.00 mo.           | 10.00 mo.       | 55.00                         |
| Rm. 18     | Arthur De Young     | 8- 1-48 to 6-30-49       | 15.00 mo.           | 10.00 mo.       | 55.00                         |
| Rm. 19     | Joseph Tucker       | 7- 1-47 to 7-31-48       | 13.00 mo.           | 12.00 mo.       | 13.00                         |
| Rm. 19     | Joseph Tucker       | 8- 1-48 to 6-30-49       | 15.00 mo.           | 12.00 mo.       | 33.00                         |
| Rm. 24     | Alexander Robertson | 8- 1-48 to 6-30-49       | 14.00 mo.           | 12.00 mo.       | 22.00                         |
| Rm. 30     | Harry Storm         | 7- 1-47 to 7-31-48       | 13.00 mo.           | 12.00 mo.       | 13.00                         |
| Rm. 30     | Harry Storm         | 8- 1-48 to 6-30-49       | 15.00 mo.           | 12.00 mo.       | 33.00                         |
| Rm. 31     | Oliver Kavern       | 7- 1-47 to 7-31-48       | 14.00 mo.           | 12.00 mo.       | 26.00                         |
| Rm. 31     | Oliver Kavern       | 8- 1-48 to 6-30-49       | 15.00 mo.           | 12.00 mo.       | 33.00                         |
| Rm. 32     | K. Okamoto          | 7- 1-48 to 6-30-49       | 16.00 mo.           | 12.00 mo.       | 48.00                         |
| Rm. 35     | Arthur De Young     | 4- 1-48 to 7-31-48       | 12.00 mo.           | 10.00 mo.       | 8.00                          |
| Rm. 35     | Arthur De Young     | 3-15-49 to 6-15-49       | 14.00 mo.           | 10.00 mo.       | 12.00                         |
| Rm. 36     | Steve Bulich        | 1- 1-45 to 12-31-47      | 12.00 mo.           | 10.00 mo.       | 72.00                         |
| Rm. 36     | Steve Bulich        | 1- 1-48 to 6-30-49       | 14.00 mo.           | 10.00 mo.       | 72.00                         |
| Apt. 4-5   | J. A. Rademaker     | 4-17-49 to 7-17-49       | 24.00 mo.           | 15.00 mo.       | 27.00                         |
| Apt. 20-21 | Louise M. Johnson   | 8- 1-48 to 6-30-49       | 35.00 mo.           | 25.00 mo.       | 110.00                        |
| Apt. 25-26 | Amy E. Merrihew     | 12- 1-48 to 7-31-48      | 22.00 mo.           | 15.00 mo.       | 49.00                         |
| Apt. 25-26 | Amy E. Merrihew     | 8- 1-48 to 6-30-49       | 24.00 mo.           | 15.00 mo.       | 99.00                         |
| Apt. 27-28 | Rose Nagler         | 4- 1-48 to 6-30-49       | 24.00 mo.           | 20.00 mo.       | 60.00                         |
| Apt. 33-34 | Helen Gray          | 8- 1-48 to 3-31-49       | 32.00 mo.           | 20.00 mo.       | 96.00                         |

Total Amount of Overcharges.....\$1,031.25

[Endorsed] : Filed August 5, 1949.

[Title of District Court and Cause.]

ANSWER OF FRANK X. GRUBL

Comes Now Frank X. Grubl, and for answer to the complaint herein, denies, admits and alleges as follows:

I.

Denies the allegations contained in paragraph III of said complaint.

II.

Denies the allegations contained in paragraph V of said complaint.

III.

Denies the allegations contained in paragraph VI of said complaint.

For a First Affirmative Defense to the Said Complaint Defendant Alleges:

That the alleged overcharge of rent was not in fact collected by the defendant as rent but under an agreement with the persons shown in the schedule attached to said complaint for the agreed purpose of maintaining the premises as rental property after notice by the owners to defendant and tenants of defendant to vacate the property within 60 days after June 3, 1948. [8]

That said defendant by reason of the sale of the property to the Los Angeles Memorial Hospital, Inc., held the said premises on a month-to-month tenancy, which said property was not under control as to the owners, and under the circumstances the



tenants agreed to pay a sum equivalent to \$2.00 per room additional to their legal rent for the purpose of defraying the necessary expenses to retain their tenancies for such period as the owners might elect to give them. That defendant employed counsel, to negotiate with the owners to permit them to remain in occupancy after the 60 days had elapsed and said tenancy has up to the present time been retained upon a month-to-month tenancy by the said defendant to and for the benefit of the tenants whose names appear in the schedule attached to the said complaint. It is admitted by the defendant that under this agreement by the tenants, named in this complaint, he gave them receipts for the agreed \$2.00 to keep them in possession as long as possible, as rent, and that it is upon this evidence that the United States has commenced this suit against him. That prior to the institution of this action the said defendant filed with the Rent Expediter a signed statement by the tenants that they understood and agreed to the payment of the alleged overcharge for the purposes as above alleged. That no subterfuge or other illegal or indirect method was used by the defendant to overcharge the said tenants is manifest by the following affirmative defense.

For a Further and Additional Affirmative Defense,  
This Answering Defendant Alleges:

I.

That defendant is informed and believes and upon such information and belief alleges that the

tenants shown on the schedule attached to the said complaint, upon receipt of the notices of overcharge from the plaintiff's office each individually endorsed upon such notice, a full and complete release of any claim against the said defendant Frank X. Grubl. They stated that there was an agreement to pay the amount above alleged for purposes other than rent, namely to retain their tenancy.

Wherefore, defendant prays that the complaint herein be dismissed.

/s/ ERNEST P. MORGAN,  
Attorney for Defendant,  
Frank X. Grubl.

Duly verified.

[Endorsed]: Filed September 6, 1949. [9]

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 19th day of January, 1950, before the Court, sitting without a jury, a jury having been waived, Asher Scheir, Esquire, appearing as counsel for plaintiff, and Ernest P. Morgan, Esquire, appearing as counsel for defendant Frank X. Grubl; the Court having heard the testimony and having examined the proof offered by the respective parties, and the cause having been submitted to the



Court for decision, and the Court being fully advised in the premises, now makes its Findings of Fact as follows: [18]

### Findings of Fact

#### I.

That the allegations set forth in Paragraph II of the complaint on file herein are true.

#### II.

That the allegations of Paragraph III of the complaint are true.

#### III.

That the allegations contained in Paragraph V of the complaint are true; and the Court further finds that the amounts alleged as overcharges on the Schedule attached to the complaint are inconsequential.

#### IV.

That the allegations contained in Paragraph VI of the complaint are not true.

#### V.

That equity may best be served by denying the prayer of plaintiff's complaint.

### Conclusions of Law

From the foregoing Findings of Fact the Court makes the following conclusions of law:

That jurisdiction of this action is founded on Section 205(c) of the Emergency Price Control

Act of 1942, as amended, and Section 2066 of the Housing and Rent Act of 1947, as amended.

That the housing accommodations located at 1130 Alpine Street, Los Angeles, California, are subject to maximum rents authorized and established pursuant to said Acts. [19]

That equity may be best served by denying the prayer of plaintiff's complaint and ordering judgment for defendant Frank X. Grubl.

Let judgment be entered accordingly.

Dated this 20th day of April, 1950.

/s/ HARRY C. WESTOVER,  
District Judge.

[Endorsed]: Filed April 20, 1950. [20]

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In the District Court of the United States, Southern  
District of California, Central Division

No. 10116-HW

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK X. GRUBL, DOES I to X,

Defendants.

### JUDGMENT

This matter came on regularly for trial the 19th day of January, 1950, before the Honorable Harry C. Westover, sitting without a jury, a jury having

been waived; Asher Scheir, appearing for plaintiff, and Ernest P. Morgan, appearing for defendant Frank X. Grubl, and evidence both oral and documentary having been adduced at the time of trial, and the Court being fully advised in the premises,

Finds that the overcharges complained of are inconsequential in amount and that equity will be best served by denying the prayer of plaintiff's complaint and ordering judgment for the defendant; it is therefore

Ordered, Adjudged and Decreed that judgment be and [21] is hereby ordered in favor of the defendant Frank X. Grubl.

Dated this 20th day of April, 1950.

/s/ HARRY C. WESTOVER,  
District Judge.

[Endorsed]: Filed April 20, 1950.

Judgment entered Apr. 24, 1950. [22]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that United States of America, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the entire final Judgment entered in this action on the 24th day of April, 1950.

Dated: Los Angeles, California, this 2nd day of June, 1950.

ABE I. LEVY,

ASHER SCHEIR,

By /s/ ASHER SCHEIR,

Attorneys for Appellant,

United States of America.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 2, 1950. [23]

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[Title of District Court and Cause.]

### APPELLANT'S DESIGNATION OF RECORD ON APPEAL

Appellant, United States of America, hereby designates the following portions of the record to be included in the record on appeal:

1. Complaint filed August 5, 1949.
2. Answer filed September 6, 1949.

3. Findings of Fact and Conclusions of Law by the Court filed April 20, 1950.

4. Final Judgment of the Court entered April 24, 1950, in Civil Order Book No. 65, Page 381.

5. Notice of Appeal dated June 2, 1950.

6. Statement of Points upon which Appellant Intends to Rely on Appeal.

7. This Designation.

Dated: Los Angeles, California, this 2nd day of June, 1950.

ABE I. LEVY,

ASHER SCHEIR,

By /s/ ASHER SCHEIR,

Attorneys for Appellant,

United States of America.

Affidavit of Service by Mail Attached.

[Endorsed]: Filed June 2, 1950. [25]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 27, inclusive, contain the original Complaint; Answer; Memorandum of Opinion and Order for Judgment; Findings of Fact and Conclusions of Law; Judgment; Notice of Appeal;

Designation of Record on Appeal and Statement of Points on Appeal which constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 15th day of June, A.D. 1950.

EDMUND L. SMITH,  
Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

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[Endorsed]: No. 12579. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Frank X. Grubl, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed June 16, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 12579

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

vs.

FRANK X. GRUBL,

Defendant-Appellee.

STATEMENT OF POINTS RELIED ON

The following are the Points upon which the appellant intends to rely upon the appeal:

1. The Court erred in holding that the overcharges were inconsequential.

2. The Court erred in denying relief to the plaintiff on the ground that the overcharges were inconsequential.

3. The Court erred in failing to grant Judgment in favor of the plaintiff and to award restitution and injunctive relief as prayed for in the complaint.

Dated: Washington, D. C., this 6th day of July, 1950.

/s/ FRANCIS X. RILEY,

Attorney for Appellant,

United States of America.

[Endorsed]: Filed July 8, 1950.

[Title of Circuit Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD  
TO BE PRINTED ON APPEAL

Appellant, United States of America, hereby designates the following portions of the record to be included in the record on appeal:

1. Complaint filed August 5, 1949.
2. Answer filed September 6, 1949.
3. Findings of Fact and Conclusions of Law by the Court filed April 20, 1950.
4. Final Judgment of the Court entered April 24, 1950, in Civil Order Book No. 65, Page 381.
5. Notice of Appeal dated June 2, 1950.
6. Statement of Points upon which Appellant Intends to Rely on Appeal.
7. Designation of Record in District Court.
8. This designation.

Dated: Washington, D. C., this 6th day of July, 1950.

/s/ FRANCIS X. RILEY,  
Attorney for Appellant,  
United States of America.

[Endorsed]: Filed July 8, 1950.